

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 3, 2005

IN RE:

**BELLSOUTH'S PETITION TO ESTABLISH
GENERIC DOCKET TO CONSIDER
AMENDMENTS TO INTERCONNECTION
AGREEMENTS RESULTING FROM CHANGES
OF LAW**

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**DOCKET NO.
04-00381**

**ORDER GRANTING PETITIONS FOR INTERVENTION,
DIRECTING FILING OF ISSUES MATRIX,
AND ESTABLISHING STATUS CONFERENCE DATE**

This matter is before the Tennessee Regulatory Authority (the "Authority") upon the *Petition to Establish Generic Docket* ("Petition") filed by BellSouth Telecommunications, Inc. ("BellSouth") on October 29, 2004. In the *Petition*, BellSouth requests that the Authority institute a generic proceeding and hold evidentiary hearings to determine what changes may be required in existing interconnection agreements between BellSouth and competitive local exchange carriers in Tennessee as a result of recent decisions of the Federal Communications Commission ("FCC").

During a regularly scheduled Authority Conference held on January 10, 2005, the Authority appointed Director Deborah Taylor Tate to act as Hearing Officer in this matter to hear preliminary matters, rule on any motions to dismiss or petitions for intervention, set a procedural schedule to completion, and prepare the docket for hearing.¹ The hearing on the merits will be

¹ The panel clarified the Hearing Officer's duties at the regularly scheduled January 31, 2005 Authority Conference

held before the voting panel assigned to this matter: Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones.

The Hearing Officer conducted a status conference on January 31, 2005 for consideration of pending petitions for intervention, to determine which issues should be included in the proceeding, and to set a procedural schedule.

INTERVENTIONS

The Hearing Officer considered the following petitions for intervention:

- 1) *Petition to Intervene of MCImetro Access Transmission Services, LLC* filed on November 15, 2004 by MCImetro Access Transmission Services, LLC ("MCI");
- 2) *Petition to Intervene of CompSouth* filed on November 22, 2004 by Competitive Carriers of the South, Inc. ("CompSouth");
- 3) *Petition to Intervene* filed on November 29, 2004 by Sprint Communications Company, L.P. and SprintCom, Inc. d/b/a Sprint PCS (together "Sprint");
- 4) *Petition to Intervene of SECCA* filed on December 6, 2004 by Southeastern Competitive Carriers Association ("SECCA");
- 5) *Petition of Xspedius Communications, LLC, on Behalf of Operating Subsidiaries Xspedius Management Company, Switched Services, LLC, and Xspedius Management Company of Chattanooga, LLC for Leave to Intervene* filed on December 8, 2004 by Xspedius Communications, LLC, on behalf of operating subsidiaries Xspedius Management Company, Switched Services, LLC and Xspedius Management Company of Chattanooga, LLC (collectively "Xspedius Companies");
- 6) *Petition of KMC Telecom V, Inc. and KMC Telecom III, LLC for Leave to Intervene* filed on December 8, 2004 by KMC Telecom V, Inc. and KMC Telecom III, Inc. (together "KMC Telecom");
- 7) *Petition of NuVox, Inc. on Behalf of its Operating Entities NuVox Communications, Inc., and NewSouth Communications Corp. for Leave to Intervene* filed on December 8, 2004 by NuVox Communications, on behalf of its operating entities NuVox Communications, Inc. and NewSouth Communications Corp. (collectively "NuVox and NewSouth"); and
- 8) *Petition to Intervene of Cinergy Communications Company* filed on January 28, 2005 by Cinergy Communications Company ("Cinergy").

At the January 31, 2005 Status Conference, counsel for XO Communications Services, Inc. ("XO") appeared and made an oral motion to receive copies of notices, orders, and other documents in this matter.² No party opposed this motion or any of the pending intervention petitions.

Tenn. Code Ann. § 4-5-310(a) (1998) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

The Hearing Officer applied this legal standard and found that the intervention petitions were timely and properly served, substantiated that legal interests of the intervenors may be determined in this matter, and demonstrated that the interests of justice and the orderly and prompt conduct of this matter will not be impaired by allowing such interventions. For these reasons, the Hearing Officer granted the petitions to intervene. The Hearing Officer also granted XO's counsel's motion to receive copies of notices, orders, and other documents.

ISSUES MATRIX

BellSouth included an issues matrix as Exhibit A to its *Petition*. At the January 31, 2005 Status Conference, the Hearing Officer asked the parties seeking intervention (collectively

² Counsel represented that XO has not filed a written intervention petition because XO intends to participate in this matter through SECCA.

“Intervenors”) if they agreed with BellSouth’s proposed issues matrix. The Intervenors indicated that they agree with some of the listed issues, believe other issues have been resolved, and contend that some of the issues are not ripe for consideration within the generic docket.

The Intervenors further stated that the issues list may change when the FCC releases its final unbundling rules; the FCC issued a Notification of Release Date on January 26, 2005, stating that it will release its final order no later than February 4, 2005. BellSouth agreed with the Intervenors’ assessment that the issues list may change after the FCC’s release of the final order. BellSouth and the Intervenors agreed to cooperate in creating an updated issues matrix and to file it with the Authority no later than Wednesday, February 23, 2005.

PROCEDURAL SCHEDULE

During the January 31, 2005 Status Conference, the Hearing Officer, BellSouth, and the Intervenors agreed to defer the establishment of a procedural schedule until after BellSouth and the Intervenors have submitted the proposed issues matrix. They also agreed to convene for another status conference on March 1, 2005 at 10:00 am (central).

IT IS THEREFORE ORDERED THAT:

1. The petitions to intervene filed by MCI, CompSouth, Sprint, SECCA, Xspedius Companies, KMC Telecom, NuVox and NewSouth, and Cinergy are granted. The Intervenors may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed herein. Counsel for XO also may receive copies of any notices, orders or other documents filed in this proceeding.
2. BellSouth and the Intervenors are directed to file a proposed issues matrix with the Authority no later than Wednesday, February 23, 2005.

3. BellSouth and the Intervenors shall reconvene for another status conference before the Hearing Officer on Tuesday, March 1, 2005 at 10:00 am (central).



Deborah Taylor Tate, Director
As Hearing Officer